

REMARKS

Applicants have carefully reviewed the Office Action dated June 19, 2001, and submit the amendments above and the remarks to follow as a full and complete response thereto.

Claims 1-26 are currently pending. In this response, Applicants have amended Claims 1, 2, 4-8, 10, 22, 23, and 25-26, and added new Claims 27-29. Claims 1-26, as amended, are presented for reconsideration.

Claims 1-10 have been objected to for containing terms enclosed within either parentheses or quotes. Applicant has removed these enclosing marks from the claims and requests that this objection be withdrawn. Additionally, Claims 5 and 6 have been objected to for the use of the phrase "can be." Applicant has complied with the request of the Office Action and removed this language from the claims. Thus, Applicant respectfully requests that this objection be withdrawn as well.

Claims 1-26 have been rejected as indefinite under 35 U.S.C. 112, second paragraph. Claim 1 was rejected for using the phrase "or the like." Applicant has removed this term from the claim, but does so in order to advance prosecution. By making this amendment, Applicant is not stating that it is giving up equivalents to Claim 1. Thus, as the offending language has been removed from the claim, Applicant respectfully requests that this rejection be withdrawn.

Additionally, Claims 2, 22, 23, and 25-26 were rejected for the use of "such as" in the claim language. Applicant has amended the claim terminology to replace the improper "such as" language with "including" or a variant thereof, which has been deemed to be acceptable claim language by the Federal Circuit.

Claims 15 and 22-24 have been rejected as indefinite for incorporating a narrower limitation into a claim with a broad range or limitation. Applicant has amended Claims 15, 22, and 24 to remove the narrower ranges and added new Claims 27-29 in which the narrower ranges are included. Applicant respectfully submits that the rejection of Claim 23 on this ground is not well taken as Claim 23 does not contain the phrase "spraying means." Applicant therefore, requests that these grounds of rejection be withdrawn as well.

Claim 7 has been rejected as indefinite because the term "natural consistency" is a relative term that is not defined by the claim, or given a standard for by the specification. Applicant has amended Claim 7 to replace the indefinite term and support for said amendment may be found on page 7, line 18, of the specification. Applicant respectfully submits that this rejection has been obviated by the amendment and requests that it be withdrawn.

Claims 8 and 16 have been rejected as indefinite for containing the phrase "several seconds to several dozen seconds." The Office Action stated that the specification did not contain a standard by which to ascertain the relative degree of this phrase. Applicant respectfully disagrees. Applicant notes that the specification on page 8, lines 10-11, the application clearly states that the retention time (to which this term refers) is determined by the product being used. Applicant respectfully submits that one with ordinary skill in the art would be aware of the suitable retention time for each product capable of use in the claimed product. Hence, Applicant submits that the phrase is adequately defined to be deemed definite and requests that the rejection be withdrawn.

Claim 16 has also been rejected as indefinite for its use of the phrase "sufficient contact time." Applicant respectfully submits that one of ordinary skill would also recognize the meaning of this term. Depending upon the product used, a different amount

of time would be necessary to create, as stated in Claim 16, "a slightly rigid structure" or shell before the wrapping process can be begun. Applicant respectfully submits that one of ordinary skill would be knowledgeable of this minimum time for each product. Additionally, Applicant notes that this period of contact time is in addition to the "several seconds to several dozen seconds" time period, as it is a separate step of the process. Thus, Applicant requests that this rejection be withdrawn as well.

Claim 8 has been rejected for lack of antecedent basis for the limitation "the wrapping of the product." Applicant has amended this claim and requests that the rejection be withdrawn.

Finally, Claim 22 has been rejected as omitting essential elements. Applicant has amended Claim 22 to remove the "separate" term from the claim, and submits that the rejection has been overcome. Applicant, therefore, respectfully requests that the rejection be withdrawn.

Claims 25 and 26 have been rejected under 35 U.S.C. 101 as containing improper claim language. Applicant respectfully traverses this rejection. Applicant submits that the claims are proper "Product-By-Process" claims as permitted in section 2173.05(p) of the MPEP. Section 2173.05(p) states that "A product-by-process claim, which is a product claim that defines the claimed product in terms of the process by which it is made, is proper." It also states that "A claim to a device, apparatus, manufacture, or composition of matter may contain a reference to the process in which it is intended to be used without being objectionable under 35 U.S.C. 112, second paragraph, so long as it is clear that the claim is directed to the product and not the process."

As required by this section, Applicant has clearly claimed a product in Claims 25 and 26, and not a process. The reference to the processes by which these products are made are also clearly permitted under the MPEP. Thus, Applicant respectfully submits

that the rejection is not well taken and requests that it be withdrawn.

Claims 1, 2, 9-11, 15, and 21-26 have been rejected under 35 U.S.C. 102(b) as anticipated by the Duffy patent. Applicant respectfully submits that this rejection is not well taken. The Duffy reference is directed towards the inhibition of fat and oil migration in a product. That is, it is directed towards the inhibition of 1) the migration from an oily substrate into a coating layer of the food product, and 2) the migration from an oily coating layer of food product into a substrate of the food product.

Applicant respectfully submits that this problem is different from that of the present invention. The problem addressed by Duffy is controlling the migration of fat and oil in food products between the substrate and the coating layer, which causes a foul taste in the food product. Duffy solves this problem by forming a barrier film coating between the substrate and the coating layer of the food.

Duffy is different from the present invention in that the present invention applies a composition onto the coating layer of the food product or onto the substrate of the food product, if the food product does not have a coating layer. Duffy requires the barrier film to be applied between the substrate and the coating layer of the food product. Additionally, the Duffy document fails to suggest or disclose the application of a composition layer onto a layer coating a food product, thereby resulting in a different product. Finally, Applicant submits that present Claims 1, 2, 9-11, 21 and 22 are not product-by-process claims. Accordingly, Applicant submits that the Duffy reference fails to disclose all the aspects of the present invention, and is, therefore, not a suitable reference for a 102 rejection. Applicant, thus, requests that the rejection be withdrawn.

Claims 3-8 and 12 have been rejected as obvious under 35 U.S.C. 103(a) in light of the Duffy reference. Applicant respectfully submits that the Office Action may have misunderstood the present invention. In rejected Claims 3-8, the chocolate has been

completely melted and is being applied to a substrate through the claimed process, whereas the Duffy reference refers to the chocolate as the substrate. Hence, the teachings of Example 2 are not relevant because the present invention does not involve the use of melting a chocolate substrate to smooth the surface, and its subsequent cooling.

As for Claim 12, Applicant is confused as to the rejection of this claim. Claim 12 is dependent upon Claim 11 and makes no reference to Claim 3 at all. Accordingly, Applicant submits that this rejection is not well taken and requests that these obviousness rejections be withdrawn.

Claims 13 and 14 have been rejected as obvious in light of the Duffy reference and the Merory reference. Applicant respectfully traverses this rejection. Applicant first submits that these claims are dependent upon Claim 11 and that Claim 11 is allowable for the reasons stated above. Hence, Applicant respectfully submits that Claims 13 and 14 are allowable as well. Also, Applicant submits that neither Merory nor Duffy disclose a composition comprising a vegetable extract soluble in an alcohol. In fact, Merory only discloses the origin and composition of Balsam of Peru and Benzoin, and their odors. The present invention uses these and other types of vegetable additives. Further, Applicant notes that Claim 1 of the Duffy reference requires "the shellac solution [to be] in a range of 30% to 70% by weight of the barrier coating solution." Applicant observes that the proportions of Claim 13 results in a 25% shellac percentage by weight (350/1380). Hence, the combination of the references still fail to teach all of the aspects of this claim.

Finally, Claims 16-20 were rejected as obvious in light of Duffy and Beckett. The Office Action noted that Duffy is silent as to a recovery means for the excess coating product and as to the type of conveyor used in the process. Beckett is submitted by the Office Action as teaching that a reservoir tank can be used to return excess coating material back to the tank, which can then be recycled and applied to other products.

Additionally, Beckett is advanced by the Examiner as teaching a wired conveyor system which increases the amount of coating applied in the coating process. The Office Action proposed, therefore, that it would have been obvious to one of ordinary skill to provide Duffy with a recovery means because such a means would have reduced cost by reducing waste.

Applicant observes that the Beckett reference does not disclose a means for spraying or atomizing the coating layer, as seen in the presently amended Claims 16-20. Hence, Applicant submits that not all of the limitations of the present claims are taught in the combination of references and requests that the rejection be withdrawn.

In view of the amendments and remarks above, Applicants respectfully submit that this application is in condition for allowance and request reconsideration and favorable action thereon.

If for any reason, the Examiner feels the application is not now in condition for allowance, it is respectfully requested that the Examiner contact, by telephone, Applicants' undersigned attorney at the indicated telephone number to arrange for an interview to expedite the disposition of this application. In the event this paper is not timely filed, Applicants hereby petition for an appropriate extension of time.

The fee for this extension may be charged to our Deposit Account No. 01-2300, along with any other fees which may be required with respect to this application.

Respectfully submitted,

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Enclosures: Marked Up Copy of Claims
Extension of Time (One Month)
Notification of Change of Name and Address

RBM/DDD:cpc:abs



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112 (twice amended) 1. The process for an improved ["coating"] of cookies, pastries, baked goods, cakes, waffles or other moist pastry products, and any soft or hard food product or base [or the like], wherein a coating of said base is carried out, and in that a composition comprising at least one food-grade ["vegetable additive"] in solution in at least one food-grade alcohol is deposited on the coating layer.

112 (twice amended) 2. The process according to claim 1, wherein the vegetable additive is comprised of a shellac, and can possibly contain other alcohol-soluble additives, [such as] said alcohol-soluble additives include Peru balsam and/or Benjamin gum.)

(twice amended) 4. The process according to claim 3, wherein (the coating composition) comprises a combination that makes it possible to use a spraying or atomizing process:

112 1 kg of dark chocolate glazing paste, (known to one skilled in the art)

(400 g of ["couverture," also known (cocoa butter, cocoa and sugar)])

112 150 g of vegetable fat, which modifies the texture and provides flavor, in accordance with the melting point of fat.)

112 (twice amended) 5. The process according to claim 1, wherein the temperature for the application of the coating [can be] is [chosen within] from [the range of] 29 to 39°C.

(twice amended) 6. The process according to claim 1, wherein the temperature for the application of the coating [can be] is [chosen within] from [the range of] 29 to 39°C, and the base [can be] is cooled to 0°C or to a lower temperature.

11 (twice amended) 7. The process according to claim 1, wherein ^{vegetable} (said alcoholic composition) of vegetable additive(s) is applied as soon as the coating has reached [its natural consistency] ^{PS & PM} 18-20°C in temperature.

112 (twice amended) 8. The process according to claim 1, wherein a contact time of ^{several seconds} (several seconds to several dozen seconds is ensured between the coating layer and ^{vegetable} (said alcoholic composition) before proceeding to [the] wrapping of the product.

(twice amended) 10. The process according to claim 1, wherein the coating applied is a ["]chocolate coating.["]

(twice amended) 15. The composition according to claim 1, wherein it also comprises flavorings and normal food additives[, which are preferably natural and soluble in the alcohol base].

16-18, 20 (twice amended) 16. A device for the improved coating of cookies, pastries, baked goods, cakes, waffles or other moist pastry products, and any comparable food product, wherein it comprises, after the means for implementing the coating operation, a spraying or atomizing means for applying an alcoholic composition of at least one reactive vegetable additive onto a coating layer, [followed by a] means for providing sufficient contact time from several seconds to several dozen seconds before the ^{vegetable} wrapping operation to allow the formation of a slightly rigid structure[, from several seconds to several dozen seconds].

(twice amended) 17. The device according to claim 16, wherein ^{it} comprises means for applying the coating through spraying or atomizing at a temperature that can be chosen from between 29 and 39°C.

²² (twice amended) 22. A [separate] process for applying the coating layer to the base or ²⁸ substrate, wherein it comprises the spraying or atomization of the coating composition onto the base or substrate using spraying or atomizing means [such as] said spraying or atomizing means including nozzles, which are preferably positionable].

^{23, 25} (twice amended) 23. Products [such as] including cookies, pastries, baked goods, cakes, waffles or other moist dough products, and any comparable food products, ^{9x coating with dry coating?} whether hard or soft, sugared or salted, wherein ^{what?} they have been obtained by using or implementing a process according to claim 1.

^{regarding claim 11 + other of 11}
(once amended) 24. The composition of [according to] claim 11, where ^{it} it also comprises flavorings and normal food additives[, which are preferably natural and soluble in the alcohol base].

^{claim 11 does not require}
(once amended) 25. Products [such as] including cookies, pastries, baked goods, cakes, waffles or other moist dough products, and any comparable food products, whether hard or soft, sugared or salted, wherein they have been obtained by using or implementing ^{comp. claim 11 is comp.} a process according to claim 11.)

(once amended) 26. Products [such as] including cookies, pastries, baked goods, cakes, waffles or other moist dough products, and any comparable food products,

26 - since app can be used to prepare non-food prod.

whether hard or soft, sugared or salted, wherein they have been obtained by using or

implementing *using alcohol app* a process according to claim 16.)

(new) 27. The composition according to claim 15, wherein the flavorings and normal food additives are natural and soluble in the alcohol base.

28 (new) 28. The process of claim 22, wherein said spraying or atomizing means are positionable.

(once amended) 29. The composition of claim 24, wherein the flavorings and normal food additives are natural and soluble in the alcohol base.